

ESTTA Tracking number: **ESTTA446104**

Filing date: **12/13/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	The Coca-Cola Company
Granted to Date of previous extension	12/14/2011
Address	One Coca-Cola Plaza Atlanta, GA 30313 UNITED STATES

Attorney information	Valyncia Simmons Baker Williams Matthiesen LLP 1725 I Street NW, Ste. 300 Washington, DC 20006 UNITED STATES valyncia@bwmtx.com, rocky@bwmtx.com Phone:202-349-1136
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### Applicant Information

Application No	85289560	Publication date	08/16/2011
Opposition Filing Date	12/13/2011	Opposition Period Ends	12/14/2011
Applicant	Cook, John 4026 Winderlakes Dr Orlando, FL 32835 UNITED STATES		

### Goods/Services Affected by Opposition


Class 033. All goods and services in the class are opposed, namely: Cello liqueurs made from vodka and different citric fruits, spices and coffee
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### Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1132820	Application Date	10/19/1978
Registration Date	04/08/1980	Foreign Priority Date	NONE
Word Mark	MELLO YELLO		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 1978/06/20 First Use In Commerce: 1978/06/20 SOFT DRINKS AND CONCENTRATES AND SYRUPS FOR MAKING SAME

U.S. Registration No.	3799512	Application Date	11/19/2009
Registration Date	06/08/2010	Foreign Priority Date	NONE
Word Mark	MELLO YELLO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1978/06/20 First Use In Commerce: 1978/06/20 Concentrates, syrups or powders used in the preparation of soft drinks; Soft drinks		

Attachments	73189953#TMSN.gif ( 1 page )( bytes ) 77876822#TMSN.jpeg ( 1 page )( bytes ) MELLO-CELLOS Notice of Opposition.pdf ( 17 pages )(634077 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/s/ Valyncia Simmons
Name	Valyncia Simmons

Date	12/13/2011
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

<p style="text-align: center;">THE COCA-COLA COMPANY, Opposer,</p> <p style="text-align: center;">v.</p> <p style="text-align: center;">JOHN COOK, Applicant.</p>	<p>Opposition No.: _____</p> <p><b>NOTICE OF OPPOSITION</b></p> <p>Application Ser. No. 85/289,560</p> <p>Mark: MELLO-CELLOS</p> <p>International Classes: 033</p> <p>Filed: April 7, 2011</p> <p>Filing Basis: 1(b) -- Intent-to-Use</p> <p>Publication Date: August 16, 2011</p>
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The Coca-Cola Company (“Opposer”) believes that it will be damaged by the issuance of a registration for the mark MELLO-CELLOS as applied for in intent-to-use application Ser. No. 85/289,560, filed on April 7, 2011 (the “Application”). The Application was filed by John Cook (“Applicant”). By this Notice of Opposition, Opposer respectfully requests that the Application be denied and refused, in its entirety, and that Opposer’s opposition be sustained.

**THE PARTIES AND PLEADING HISTORY**

1. Opposer is a Delaware corporation with a principal place of business at One Coca-Cola Plaza, Atlanta, Georgia 30313.

2. Applicant is listed in the Application as an individual residing at 4026 Winderlakes Drive, Orlando, Florida 32835.

3. Opposer timely obtained an extension of time to oppose to December 14, 2011, and timely files this Notice of Opposition.

#### **OPPOSER AND ITS MARK**

4. Opposer is a leading purveyor of beverages—from water products to juices and soft drinks, Opposer has, over the course of 125 years, developed highly successful and renowned beverage brands that are readily recognizable by consumers. One such brand developed by Opposer is MELLO YELLO®.

5. Opposer has used continuously, in interstate commerce, its MELLO YELLO® trademark on soft drinks, concentrates, syrups and powders for making soft drinks (“Opposer’s Goods”), since at least as early as June 20, 1978—over three decades before Applicant filed his intent-to-use application for MELLO-CELLOS. Opposer’s soft drinks bearing the MELLO YELLO® mark are sold in tens of thousands of retail outlets throughout the United States and have been for many years.

6. Opposer owns an incontestable federal registration for MELLO YELLO® (stylized), the application for which was filed on October 19, 1978 (“Opposer’s Priority Date”), and which issued on April 8, 1980 (Reg. No. 1,132,820). That registration has been timely renewed and identifies the following goods: “soft drinks and concentrates and syrups for making same.” (A true and correct copy of the aforementioned registration, including status and ownership information, from the USPTO TARR database is attached hereto as an **Exhibit A.**)

7. Opposer also owns Registration No. 3,799,512 for MELLO YELLO® (word mark), the application for which was filed on November 19, 2009, and which issued on June 8, 2010. (A renewal of this latter registration is not yet required.) That registration identifies the

following goods: “concentrates, syrups or powders used in the preparation of soft drinks.” (A true and correct copy of the aforementioned registration, including status and ownership information, from the USPTO TARR database is attached hereto as an **Exhibit B.**)

8. Due to the extensive use and promotion of the MELLO YELLO<sup>®</sup> mark by Opposer for more than 30 years, which continues to date, the MELLO YELLO<sup>®</sup> mark readily identifies Opposer’s Goods and distinguishes such goods from those offered by Opposer’s competitors. As a result, MELLO YELLO<sup>®</sup> is a well-known mark and is an extremely important asset of Opposer.

#### **APPLICANT AND THE APPLICATION**

9. Applicant seeks to register the term MELLO-CELLOS as a trademark for the following goods: “Cello liqueurs from vodka and different citric fruits, spices and coffee” in International Class 033 (“Applicant’s Goods”).

10. Applicant filed the Application on April 7, 2011 (“Applicant’s Filing Date”) as an intent-to-use application.

11. On information and belief, Applicant did not use MELLO-CELLOS as a trademark for Applicant’s Goods prior to April 7, 2011. Accordingly, April 7, 2011 is the earliest date for which Applicant can claim priority.

#### **FURTHER GROUNDS FOR OPPOSITION**

12. Opposer’s MELLO YELLO<sup>®</sup> mark was used at least as early as June 20, 1978—more than three decades prior to the Applicant’s Filing Date. Thus, Opposer clearly has priority.

13. Opposer’s MELLO YELLO<sup>®</sup> mark and Applicant’s proposed MELLO-CELLOS mark are confusingly similar in sight, sound and meaning.

14. MELLO YELLO<sup>®</sup> and MELLO-CELLOS are visually similar. Both contain four syllables, three of which are identical. Both spell the first word “MELLO,” rather than “mellow.”

15. MELLO YELLO<sup>®</sup> and MELLO-CELLOS are phonetically similar. The fourth syllable of each mark (“YEL” and “CEL,” respectively) rhymes with its first syllable (“MEL”). When spoken, MELLO YELLO<sup>®</sup> and MELLO-CELLOS have a similar cadence.

16. MELLO YELLO<sup>®</sup> and MELLO-CELLOS convey similar meanings to consumers. The first word in each suggests the taste of the beverage on which it is used (or will be used in the case of MELLO-CELLOS) is a smooth taste, while the second word of each mark gives information about a different aspect of the product (*i.e.*, color or content).

17. Applicant’s Goods are related to Opposer’s Goods. Like the goods on which Opposer uses its MELLO YELLO<sup>®</sup> mark, Applicant’s Goods will consist of a caffeinated, citrus-based beverage intended for human consumption. Soft drinks, such as those offered under the MELLO YELLO<sup>®</sup> mark, are often sold as “cocktail mixers” (*i.e.*, as non-alcoholic beverages used in combination with alcoholic beverages) to create beverages similar to the vodka-based liqueur Applicant proposes to sell under the MELLO-CELLOS mark.

18. Applicant’s Goods will be offered for sale and sold through the same or similar channels of trade as Opposer’s Goods offered for sale and sold under the MELLO YELLO<sup>®</sup> mark. Soft drinks such as those offered under Opposer’s MELLO YELLO<sup>®</sup> mark often are sold in liquor stores, grocery stores and convenience stores where, on information and belief, Applicant’s Goods offered under MELLO-CELLOS are to be sold. Opposer’s Goods and Applicant’s Goods not only are likely to be encountered in the same retail environment, but also

are likely to be sold in close proximity to one another; thereby creating significant opportunities for consumer confusion.

19. Applicant's Goods are likely to be purchased by some of the same consumers who purchase Opposer's Goods offered under the MELLO YELLO<sup>®</sup> mark.

20. Neither Opposer's Goods sold under the MELLO YELLO<sup>®</sup> mark, nor Applicant's Goods to be sold under the proposed MELLO-CELLOS mark, are or will be sold to a particularly sophisticated class of consumers.

21. Consumers are likely to believe (incorrectly) that Opposer is the source of Applicant's Goods offered under the MELLO-CELLOS mark and/or that Opposer sponsors, endorses, approves of or is affiliated with Applicant and/or Applicant's Goods offered under the MELLO-CELLOS mark.

22. Applicant's proposed MELLO-CELLOS mark so resembles Opposer's MELLO YELLO<sup>®</sup> mark as to be likely, when applied to Applicant's Goods, to cause confusion, to cause mistake, and to deceive the public with consequent injury to Opposer, the trade, and the public.

23. Opposer will be damaged if the Application is allowed to proceed to registration as actual and potential consumers are likely to be confused, mistaken, or deceived into believing that Applicant or Applicant's Goods are connected or affiliated with, sponsored or approved by Opposer. Any negative connotation associated with Applicant's Goods marketed and sold under MELLO-CELLOS will reflect poorly upon, and seriously injure and impair the valuable goodwill Opposer has generated through more than 30 years of continuous and extensive use and promotion of the goods offered under the MELLO YELLO<sup>®</sup> mark. To permit registration of MELLO-CELLOS by Applicant also would damage Opposer because such a registration



would give Applicant a statutory, exclusive, nationwide right to use MELLO-CELLOS on goods related to those on which Opposer's MELLO YELLO<sup>®</sup> mark is used; thereby violating Opposer's rights and unduly narrowing the scope of protection of the MELLO YELLO<sup>®</sup> mark currently afforded to Opposer by statute. Such registration of MELLO-CELLOS would contravene 15 U.S.C. § 1052(d).

24. Registration of Applicant's proposed MELLO-CELLOS mark also should not be permitted as it would suggest a false connection or affiliation between Opposer and Applicant, in contravention of 15 U.S.C. § 1052(a).

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WHEREFORE Opposer respectfully prays that its opposition be sustained and that the Application be denied and refused, in its entirety. This Notice of Opposition is filed according to the rules governing electronic submissions to the Trademark Trial and Appeal Board, including payment of the requisite filing fee.

DATED: December 13, 2011

<b>CERTIFICATE OF SERVICE</b>  I hereby certify that this NOTICE OF OPPOSITION and the Exhibits thereto, is being deposited with the United States Postal Service with sufficient postage as first class mail on December 13, 2011 in an envelope addressed to the listed correspondent for the Applicant:  John Cook 4026 Winderlakes Drive Orlando, Florida 32835  <u>/s/ John C. Rawls</u> John C. Rawls	<b>BAKER WILLIAMS MATTHIESEN LLP</b>  <u>/s/ Valyncia Simmons</u> Valyncia Simmons Partner 1725 I Street NW, Ste. 300 Washington, DC 20006 Ph: 202.349.1136 Email: <a href="mailto:valyncia@bwmtx.com">valyncia@bwmtx.com</a>  John C. Rawls Partner 1177 West Loop South, Ste. 1600 Houston, TX 77027 Ph: 713.888.2507 Email: <a href="mailto:rocky@bwmtx.com">rocky@bwmtx.com</a>  Attorneys for Opposer, The Coca-Cola Company
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# EXHIBIT A

Int. Cl.: 32

U.S. Cl.: 45

Reg. No. 1,132,820

U.S. Patent and Trademark Office

Reg. Apr. 8, 1980

TRADEMARK

Principal Register

**mello  
yello**

The Coca-Cola Company (Delaware corporation)  
310 North Ave., NW.  
Atlanta, Ga. 30313

For: Soft Drinks and Concentrates and Syrups for Making  
Same —in Class 32. (U.S. Cl. 45).  
First use June 20, 1978; in commerce June 20, 1978.

Ser. No. 189,953. Filed Oct. 19, 1978.

LOUIS STRICKMAN, Examiner

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This page was generated by the TARR system on 2011-12-13 15:14:32 ET

Serial Number: 73189953 Assignment Information Trademark Document Retrieval

Registration Number: 1132820

Mark



(words only): MELLO YELLO

Standard Character claim: No

Current Status: The registration has been renewed.

Date of Status: 2010-01-19

Filing Date: 1978-10-19

Transformed into a National Application: No

Registration Date: 1980-04-08

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)

Current Location: (NOT AVAILABLE)

Date In Location: 2010-01-19

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LAST APPLICANT(S)/OWNER(S) OF RECORD

---

## 1. COCA-COLA COMPANY, THE

**Address:**

COCA-COLA COMPANY, THE

One Coca-Cola Plaza

Atlanta, GA 30313

United States

**Legal Entity Type:** Corporation**State or Country of Incorporation:** Delaware

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**GOODS AND/OR SERVICES**

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**International Class:** 032**Class Status:** Active

SOFT DRINKS AND CONCENTRATES AND SYRUPS FOR MAKING SAME

**Basis:** 1(a)**First Use Date:** 1978-06-20**First Use in Commerce Date:** 1978-06-20

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**ADDITIONAL INFORMATION**

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(NOT AVAILABLE)

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE:** To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2010-01-19 - Second renewal 10 year

2010-01-19 - Section 8 (10-year) accepted/ Section 9 granted

2010-01-12 - Case Assigned To Post Registration Paralegal

2010-01-11 - TEAS Section 8 &amp; 9 Received

2008-01-30 - Case File In TICRS

2004-10-18 - TEAS Change Of Owner Address Received

2000-09-22 - First renewal 10 year

2000-09-22 - Section 8 (10-year) accepted/ Section 9 granted

2000-02-11 - Combined Section 8 (10-year)/Section 9 filed

1985-08-08 - Section 8 (6-year) accepted & Section 15 acknowledged

1985-05-03 - Section 8 (6-year) and Section 15 Filed

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

Pamela C. Mallari

**Correspondent**

Pamela C. Mallari

One Coca-Cola Plaza

Atlanta GA 30313

Phone Number: 404 676 3244

Fax Number: 404 598 3244

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**For Serial Number: 73189953**

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Web interface last modified: July 25, 2011 v.2.2

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# EXHIBIT B

## United States of America United States Patent and Trademark Office

### MELLO YELLO

Reg. No. 3,799,512

Registered June 8, 2010

Int. Cl.: 32

TRADEMARK

PRINCIPAL REGISTER

THE COCA-COLA COMPANY (DELAWARE CORPORATION)  
ONE COCA-COLA PLAZA  
ATLANTA, GA 30313

FOR: CONCENTRATES, SYRUPS OR POWDERS USED IN THE PREPARATION OF SOFT  
DRINKS; SOFT DRINKS, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 6-20-1978; IN COMMERCE 6-20-1978.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-  
TICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 1,132,820.

SER. NO. 77-876,822, FILED 11-19-2009.

FRANK LAITUCA, EXAMINING ATTORNEY



*David J. Kybas*

Director of the United States Patent and Trademark Office



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This page was generated by the TARR system on 2011-12-13 15:15:38 ET

Serial Number: 77876822 Assignment Information Trademark Document Retrieval

Registration Number: 3799512

Mark

MELLO YELLO

(words only): MELLO YELLO

Standard Character claim: Yes

Current Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Date of Status: 2010-06-08

Filing Date: 2009-11-19

Filed as TEAS Plus Application: Yes

Currently TEAS Plus Application: Yes

Transformed into a National Application: No

Registration Date: 2010-06-08

Register: Principal

Law Office Assigned: LAW OFFICE 109

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2010-06-08

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

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1. The Coca-Cola Company

**Address:**

The Coca-Cola Company  
One Coca-Cola Plaza  
Atlanta, GA 30313  
United States

**Legal Entity Type:** Corporation**State or Country of Incorporation:** Delaware

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**GOODS AND/OR SERVICES**

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**International Class:** 032**Class Status:** Active

Concentrates, syrups or powders used in the preparation of soft drinks; Soft drinks

**Basis:** 1(a)**First Use Date:** 1978-06-20**First Use in Commerce Date:** 1978-06-20

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**ADDITIONAL INFORMATION**

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**Prior Registration Number(s):**

1132820

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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2010-06-08 - Registered - Principal Register

2010-03-23 - Notice Of Actual Publication E-Mailed

2010-03-23 - Published for opposition

2010-02-18 - Law Office Publication Review Completed

2010-02-18 - Assigned To LIE

2010-01-24 - Approved for Pub - Principal Register (Initial exam)

2010-01-23 - Assigned To Examiner

2009-11-25 - New Application Office Supplied Data Entered In Tram

2009-11-23 - New Application Entered In Tram

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

Pamela C. Mallari

**Correspondent**

PAMELA C. MALLARI

1 COCA COLA PLZ NW

ATLANTA, GA 30313-2420

Phone Number: 404 676 3244

Fax Number: 404 598 3244

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